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9 Attorneys for Plaintiffs, District Council 16 Northern
10 California Health and Welfare Trust Fund, et al.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 DISTRICT COUNCIL 16 NORTHERN
14 CALIFORNIA HEALTH AND WELFARE TRUST
15 FUND, et al.,

16 Plaintiffs,

17 v.

18 RBE CONSTRUCTION INC., a California
19 corporation, doing business as SLINGSHOT
20 DRYWALL,

21 Defendant.

Case No.: 17-CV-03327-HSG

**JUDGMENT PURSUANT TO
STIPULATION**

22 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the parties
23 hereto that Judgment shall be entered in the within action in favor of Plaintiffs District Council 16
24 Northern California Health and Welfare Trust Fund, et al. (“Plaintiffs” or “Trust Funds”) and against
25 Defendant RBE CONSTRUCTION INC., a California corporation, doing business as SLINGSHOT
26 DRYWALL, (hereinafter referred to as “Defendant”) as follows:

27 1. Defendant was signatory to and bound by the terms of a Collective Bargaining
28 Agreement(s) (“Bargaining Agreement”) with the Plaintiff Union (“Union”). The Bargaining Agreement
was terminated effective June 30, 2018.

2. Roberto Elizondo confirms that he is the RMO/CEO/President of Defendant RBE

1 CONSTRUCTION INC., a California corporation, doing business as SLINGSHOT DRYWALL, and is
2 authorized to enter into this Stipulation on its behalf.

3 3. Defendant specifically consents to the Court's jurisdiction, as well as the use of a
4 Magistrate Judge for all proceedings, including entry of judgment herein. Defendant further confirms
5 that all successors in interest, assignees, and affiliated entities (including, but not limited to, parent or
6 other controlling companies), and any companies with which Defendant joins or merges, if any, shall
7 also be bound by the terms of the Stipulation as Guarantor. This shall include any additional entities in
8 which Guarantor is an officer, owner or possesses any controlling ownership interest. All such entities
9 shall specifically consent to the Court's jurisdiction, the use of a Magistrate Judge for all proceedings,
10 and all other terms herein, in writing, at the time of any assignment, affiliation or purchase.

11 4. The Parties hereby stipulate that **Judgment shall be entered against Defendant RBE**
12 **CONSTRUCTION INC., a California corporation, doing business as SLINGSHOT DRYWALL**
13 **and in favor of Plaintiffs in the amount of \$95,000.00.** Said Judgment is entered pursuant to the terms
14 of a confidential settlement reached by the Parties.

15 **REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION**

16 5. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

- 17 a) Notices to Defendant: Wallace Smith, Squire Patton Boggs, 275 Battery Street,
18 Suite 2600, San Francisco, California 94111;
email: wallace.smith@squirepb.com
19
20 b) Notices to Plaintiffs: Michele R. Stafford, Saltzman & Johnson Law Corporation,
1141 Harbor Bay Parkway, Suite 100, Alameda, CA 94502; email:
21 mstafford@sjlawcorp.com , copy to compliance@sjlawcorp.com

22 6. The requirements pursuant to the terms of this Stipulation are as follows:

23 a) **Monthly Payments**: Defendant shall pay the Judgment amount of \$95,000.00
24 pursuant to the following terms:

25 i) Payments in the amount of **\$2,639.00 per month** shall begin on August
26 15, 2019, and continue on or before the 15th (fifteenth) day of each month thereafter **for a period of**
27 **thirty-six (36) months**. Plaintiffs may require that Defendant pay electronically by ACH/wire transfer,
28 or by cashier's check.

1 ii) Defendant shall have the right to increase the monthly payments at any
2 time and there is no penalty for prepayment.

3 iii) Payments shall be applied first to interest, at the rate of 5% per annum in
4 accordance with the Bargaining Agreement(s) and Trust Agreements. Interest has been included in the
5 monthly payment amount set forth above, assuming timely payments over the 36-month term of the
6 payment plan.

7 b) **Contributions:** If Defendant becomes signatory to the Plaintiff Union, or if an
8 obligation for Defendant to contribute to the Plaintiff Trust Funds otherwise arises¹, then Defendant
9 shall remain current in reporting and payment of contributions due to Plaintiffs under the terms of the
10 Collective Bargaining or other related Agreement(s).

11 c) **Audit:** If Defendant becomes signatory to the Plaintiff Union, or if an obligation
12 for Defendant to contribute to the Plaintiff Trust Funds otherwise arises¹, then Defendant shall comply
13 with the Trust Funds' request for an audit of Defendant's payroll records pursuant to the requirements of
14 Defendant's Collective Bargaining and/or other related Agreement and/or the Plaintiffs' Trust
15 Agreements, Defendant must contact the auditor within seven days of receiving notice, and must
16 schedule the audit as requested. Defendant must fully comply with the audit by keeping the scheduled
17 appointment for the audit and making all documentation requested by the auditor available for
18 inspection.

19 i) In the event that amounts are found due to Plaintiffs as a result of the
20 audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendant. In
21 the event that the audit findings are not contested, payment in full shall be delivered to Michele R.
22 Stafford at the address provided above within ten days of the date of the demand letter.

23 ii) In the event that Defendant disputes the audit findings, Defendant must
24 provide the dispute in writing, with all supporting documentation, within ten days of the date of the
25 demand. Defendant shall be notified as to whether revisions will be made to the audit. If revisions are
26 not made, payment in full of the amount requested in the above-described demand letter, plus additional

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28 ¹ An example of a circumstance where such an obligation would arise is Defendant becoming signatory to a Project Labor Agreement ("PLA") requiring contributions to the Plaintiff Trust Funds as a condition of the PLA.

interest, will be immediately due. If revisions are made, payment in full of the revised amount shall be immediately due. Plaintiffs shall send a revised written demand for payment to Defendant. Payment in full shall be delivered to Michele R. Stafford at the address provided above within ten days of the date of the demand letter.

iii) If Defendant is unable to make payment in full, Defendant may submit a request to add the amounts found due to this Stipulation. If the Stipulation is so revised, Defendant shall execute the Amended Judgment or Amendment to Judgment within ten days of receipt. Failure to execute the revised agreement shall constitute a default of the terms herein.

iv) Failure by Defendant to fully comply with the audit, and/or submit either payment in full or a request to add the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations under this agreement.

7. In summary, Defendant shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Stipulation has been fully satisfied:

<u>Required Submissions</u>	<u>Delivery deadlines²</u>	<u>Delivery locations</u>
Stipulated payments in the amount of \$2,639.00 payable to <i>District Council 16 Northern California Trust Funds</i>	15 th day of each month (8/15/19-7/15/22)	Michele R. Stafford Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, #100 Alameda, CA 94502
Current contribution reports and payments payable to <i>District Council 16 Northern California Trust Funds</i> (only if required)	If Defendant becomes signatory to the Union, or if an obligation for Defendant to contribute to the Plaintiff Trust Fund otherwise arises, then Defendant shall submit its current contribution reports pursuant to this section as required by the terms of that Agreement	District Council 16 Northern California Trust Funds P.O Box 4816 Hayward, CA 94540 Plus copies to: compliance@sjlawcorp.com (subject: "Slingshot"); or Michele R. Stafford Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, Ste 100, Alameda, CA 94502

² If the Stipulation has not been fully satisfied by 7/15/22, all monthly submission requirements shall continue until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

1 8. Failure to comply with any of the above terms, including submitting a payment that does
2 not clear the bank, or failing to endorse a joint check provided for the payment of amounts due under the
3 terms of this Stipulation including current contributions, shall constitute a default of the obligations
4 under this Stipulation.

5 **DEFAULTS UNDER THE TERMS OF THIS STIPULATION**

6 9. If default occurs, Plaintiffs shall make a written demand to Defendant to cure said default
7 *within seven (7) days of the date of the notice from Plaintiffs*. In the event default is not cured within
8 the required time frame, all amounts remaining due hereunder (after application of principal payments
9 made, if any) shall be due and payable on demand by Plaintiffs.

10 10. A Writ of Execution may be obtained without further notice, in the amount of the unpaid
11 balance plus any additional amounts due under the terms herein. Such Writ of Execution may be
12 obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the
13 balance due as of the date of default.

14 **MISCELLANEOUS PROVISIONS**

15 11. The above requirements remain in full force and effect regardless of whether or not
16 Defendant has ongoing work, whether Defendant's account with the Trust Funds is active, or whether
17 Defendant is signatory to a Collective Bargaining Agreement with the Union.

18 12. Payments made by joint check shall be endorsed on behalf of Defendant prior to
19 submission, and may be applied toward Defendant's monthly stipulated payment, provided that the
20 issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a
21 release is requested may not be applied toward Defendant's monthly stipulated payment, but shall be
22 deducted from the total balance owed under this Stipulation, provided the payment is for contributions
23 included in this Stipulation.

24 13. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise Defendant as
25 to the final amount due.

26 14. Other than the notice specified in Section 9, Defendant waives any notice of Entry of
27 Judgment or of any Request for a Writ of Execution, and expressly waive all rights to stay of execution
28 and appeal.

1 15. Any failure on the part of Plaintiffs to take any action as provided herein in the event of
2 any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach.

3 16. Defendant has represented that it does not intend to file for Bankruptcy protection. In the
4 event that Defendant files for Bankruptcy protection, Defendant specifically agrees that the amounts due
5 hereunder, which are employee benefits and related sums, shall not be dischargeable. Defendant agrees
6 to reaffirm this debt, and will not request that the debt be discharged.

7 17. Should any provisions of this Stipulation be declared or determined by any court of
8 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of
9 the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or
10 invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

11 18. This Stipulation contains all of the terms agreed to by the parties and no other agreements
12 have been made. Any changes to this Stipulation shall be effective only if made in writing and signed by
13 all parties hereto.

14 19. This Stipulation may be executed in any number of counterparts and by facsimile, each of
15 which shall be deemed an original and all of which shall constitute the same instrument.

16 20. Defendant represents and warrants that it has had the opportunity to be or has been
17 represented by counsel of its own choosing in connection with entering this Stipulation under the terms
18 and conditions set forth herein, that its principal has read this Stipulation with care and is fully aware of
19 and represent that it enters into this Stipulation voluntarily and without duress.

20 21. Plaintiffs will cooperate with Defendant and promptly (within 5 business days) provide
21 any necessary release(s) of any claims by the Plaintiff Trust Funds to general contractor E.F. Brett and
22 Company, Inc. required to release monies Defendant alleges is owed to it by E.F. Brett. If requested,
23 Plaintiffs will also promptly (within 5 business days) provide a letter to general contractor E.F. Brett.
24 The letter will include acknowledgment of the Parties' settlement of this action, confirmation that
25 Plaintiffs have no objection to E.F. Brett paying Defendant RBE any amounts owing to Defendant RBE
26 directly (without the necessity of a joint check) and confirmation of Defendant RBE's termination of its
27 Bargaining Agreement with the Union effective June 30, 2018 (as indicated by the Plaintiff Trust Funds'
28 records). Plaintiffs further agree to cooperate with Defendant RBE and provide any requested letters to

any third parties confirming the nature of the parties' settlement based on monthly payments.

22. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied.

DATED: August 2, 2019

RBE CONSTRUCTION INC., a California corporation, doing business as SLINGSHOT DRYWALL

By: /s/
Roberto Elizondo, RMO/CEO/President

DATED: August 5, 2019

DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST FUND, et al.

By: /s/
Robert Williams
Trustee of Plaintiff Trust Funds

DATED: August 5, 2019

DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST FUND, et al.

By: /s/
Frank Nunes
Trustee of Plaintiff Trust Funds

APPROVED AS TO FORM:

DATED: August 2, 2019

SQUIRE PATTON BOGGS (US) LLP

By: /s/
Wallace E. Smith, Esq.
Erik Morrison, Esq.
Attorneys for Defendant

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1 DATED: August 5, 2019

**SALTZMAN AND JOHNSON LAW
CORPORATION**

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3 By: _____ /s/

Matthew P. Minser, Esq.

4 Attorneys for Plaintiffs

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7 **IT IS SO ORDERED.**

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9 Dated: _____, 2019

UNITED STATES DISTRICT COURT JUDGE

1 any third parties confirming the nature of the parties' settlement based on monthly payments.

2 22. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment
3 is satisfied.

4 DATED: August 2, 2019

**RBE CONSTRUCTION INC., a California
corporation, doing business as SLINGSHOT
DRYWALL**

6 By: Roberto B. Elizondo
7 Roberto Elizondo, RMO/CEO/President

8
9 DATED: August , 2019

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

11 By: _____
12 Robert Williams
13 Trustee of Plaintiff Trust Funds

14 DATED: August , 2019

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

16 By: _____
17 Frank Nunes
18 Trustee of Plaintiff Trust Funds

19 **APPROVED AS TO FORM:**

20 DATED: August 2, 2019

SQUIRE PATTON BOGGS (US) LLP

21 By: Wallace E. Smith, Esq.
22 Erik Morrison, Esq.
23 Attorneys for Defendant

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any third parties confirming the nature of the parties' settlement based on monthly payments.

22. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied.

DATED: August , 2019

RBE CONSTRUCTION INC., a California corporation, doing business as SLINGSHOT DRYWALL

By: _____
Roberto Elizondo, RMO/CEO/President

DATED: August 5, 2019

DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST FUND, et al.

By:  _____
Robert Williams
Trustee of Plaintiff Trust Funds

DATED: August , 2019

DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST FUND, et al.

By: _____
Frank Nunes
Trustee of Plaintiff Trust Funds

APPROVED AS TO FORM:

DATED: August , 2019

SQUIRE PATTON BOGGS (US) LLP

By: _____
Wallace E. Smith, Esq.
Erik Morrison, Esq.
Attorneys for Defendant

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1 DATED: August 5, 2019

SALTZMAN AND JOHNSON LAW
CORPORATION

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3 By: _____

Matthew P. Minser, Esq.
Attorneys for Plaintiffs

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7 **IT IS SO ORDERED.**

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9 Dated: August 6, 2019


UNITED STATES DISTRICT COURT JUDGE